WXPost FEB 23 1976

CIA (D)

The President's Secrecy Legislation

IF YOU AGREE with Philip Agee, whose letter appears on this page today, you will find the reforms of the Central Intelligence Agency and the secrecy legislation proposed by President Ford wholly inadequate. Mr. Agee —and some others—believe the CIA is an organization whose agents and activities should be publicly identified and exposed because, in their view, its operations are wholly inimical to our true national interest. On the other hand, if you believe, as we do, that there is a place in this imperfect world for secret government activities—as long as they are properly directed and controlled—you may find the President's proposals a reasonable starting point. We have already expressed some views on those reorganization proposals. Today we intend to focus on the details of the President's secrecy legislation which is aimed—rather precisely—at people like Mr. Agee.

The secrecy legislation, as we understand it (it is printed on the opposite page so that you can judge for yourself how narrowly it is drawn) attempts to deter or discourage leaks of information relating only to the *sources and methods* of collecting foreign intelligence and the *methods and techniques* used to evaluate it. It is not a proposal to create an Official Secrets Act (which would punish anyone for revealing any government secrets) or, even, to protect the general run of secret intelligence information, as Mr. Ford seemed to suggest in his press conference. It is not, for example, directed at the *content* of foreign intelligence or information that relates to past or future government policies (except as the publication of a specific piece of intelligence might, by itself, reveal the method by which the information was obtained). Thus, it does not appear to cover such material as the nation's negotiating position on the SALT talks or most of the contents of the Pentagon Papers. It would cover, however, such information as the names of CIA officers and agents, the ways in which they gather information, and such techniques as the use of submarines for intelligence purposes. As fascinating as this kind of information is, it is information we think the government has a legitimate need and, as far as secret agents are concerned, a moral obligation to keep secret. The public identification of such an agent, as in the case of Richard Welch, not only destroys his effectiveness but also may endanger his life. This is a point which Mr. Agee disputes in his letter but which he seems to concede tacitly by suggesting that Mr. Welch should have come in from the cold once his cover was blown. In any case, in a democratic system there is a better way, we think, to work out one's antipathy toward CIA operatives, and that is for Congress to bring them home by outlawing their activities and/or refusing to vote the necessary funds.

In many ways, President Ford's proposal can be regarded as the modernization of a law that went on the books 25 years ago to protect the government's cryptographic and communication intelligence activities. That law made it a crime for anyone—in or out of the government—knowingly to communicate to unauthorized persons any information concerning codes, ciphers and methods of intercepting communications and analyzing them. Mr. Ford's proposal puts other ways of gathering intelligence on an equal footing with code-breaking and communications interception, but with some differences. The most important of these is that Mr. Ford does not propose to try to punish private citizens, such as journalists, who have no relationship with government, for revealing this kind of information; the old code statute does.

Once this much is said about the general thrust of Mr. Ford's secrecy legislation, some specific problems need to be recognized. One is that, while agencies like the CIA need to protect legitimate sources and methods, they should not be able to hide illegitimate secrets under so stringent a secrecy statute. Missing from the President's proposal is anything to make legal, indeed to encourage, low level personnel's revealing information concerning illegal or unauthorized activities, such as some of those undertaken by the CIA in the past. Congress should put such a provision into the statute and, to make it workable, spell out in more detail than does the new executive order, what the limits are to be on intelligence-gathering methods.

A second troublesome area that the proposed legislation does not address is the old bureaucratic trick of placing a small amount of highly classified material in a document made up mostly of unclassifiable but embarrassing information—and giving the whole package the highest classification. That can perhaps be best handled in terms of this statute by broadening the scope of judicial review of the legitimacy of the classification of the specific information that was or is about to be revealed. Similarly, Congress needs to broaden somewhat, and clarify, the part of this proposal that says revelation of information already in the public domain cannot be punished.

Unlike most other secrecy statutes that have been proposed in recent years or adopted in the past, the President's version, if modified as we have suggested, would balance reasonably well the conflicting needs for some secrecy and much freedom of information. It is sharply limited in the kind of information that can be kept secret and it avoids First Amendment problems by placing its barriers on those who chose in the first place to engage in secret work. There may come a time in the history of the world when distrust and aggression among nations diminish so much that the need for government secrecy will disappear. But that time is not yet. And until it arrives, the government can quite properly take stringent steps to protect at least the sources and methods by which it learns what is going on elsewhere in the world.